DOCUMENT RESUME

ED 082 482 EM 011 444

TITLE	The Public and Broadcasting; A Procedure Manual.
INSTITUTION	Federal Communications Bar Association, Washington, D.C.
PUB DATE	29 Sep 72
NOTE	10p.
JOURNAL CIT	Federal Register; v37 n190 Part III Sep 29, 1972
EDRS PRICE	MF-$0.65 HC-$3.29
DESCRIPTORS	*Broadcast Industry; *Certification; *Citizen Participation; Community Agencies (Public); *Due Process; Government Publications; *Government Role; Manuals; Radio; Television
IDENTIFIERS	FCC; *Federal Communications Commission

ABSTRACT

The Federal Communications Commission (FCC) outlines in this pamphlet the respective roles of the broadcast station, the FCC, and the concerned citizen in the establishment and preservation of quality broadcasting services. Procedures available to the citizen are described and practical advice concerning their use is offered in the hope that it will encourage effective and helpful community participation in broadcasting. Detailed information is provided regarding: 1) the initiation of proceedings, including sections dealing with complaints, political broadcasting, the fairness doctrine, personal attacks, and political editorials; 2) participation in application proceedings, informal objections thereto, and petitions to deny applications; 3) participation in hearings; 4) rule making, including petitions for making rules both with and without prior public notice and procedure; and 5) petitions for waivers of a rule. (Author)

FILMED FROM BEST AVAILABLE COPY

ED 082482

federal register

FRIDAY, SEPTEMBER 29, 1972
WASHINGTON, D.C.

Volume 37 ■ Number 190

PART III

FEDERAL COMMUNICATIONS COMMISSION

■

The Public and Broadcasting

■

PROCEDURAL MANUAL

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION
THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

EM 011 444

FEDERAL COMMUNICATIONS COMMISSION

[FCC 72-829]

BROADCAST PROCEDURE MANUAL

SEPTEMBER 26, 1972.

Notice is hereby given of the issuance of a pamphlet entitled, "The Public and Broadcasting—A Procedure Manual." In the manual, an effort is made to outline the respective roles of the broadcast station, the Commission, and the concerned citizen in the establishment and preservation of quality broadcasting services, to outline procedures available to the citizen, and to provide practical advice concerning their use. We are hopeful that the manual will encourage participation by members of the community and that it will direct such participation along lines which are most effective and helpful to the Commission.

Action by the Commission, September 20, 1972. Commissioners Burch (Chairman), Johnson, H. Rex Lee, Reid, Wiley, and Hooks.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

THE PUBLIC AND BROADCASTING—A PROCEDURE MANUAL

TABLE OF CONTENTS

INTRODUCTION

PROCEEDINGS INVOLVING PARTICULAR APPLICANTS AND LICENSEES

INITIATING A PROCEEDING

Complaints generally.
Political broadcasting.
Fairness doctrine.
Personal attacks.
Political editorials.

PARTICIPATION IN APPLICATION PROCEEDINGS

General.
Informal objection.
Petition to deny.

PARTICIPATION IN A HEARING PROCEEDING

RULE MAKING

Petition for rule making.
Rule making without prior notice and public procedure.
Rule making with prior notice and public procedure.
Petition for waiver of a rule.

REFERENCE MATERIALS

THE PUBLIC AND BROADCASTING—A PROCEDURE MANUAL

INTRODUCTION

1. Establishing and maintaining quality broadcasting services in a community is the responsibility of broadcast station licensees and the Federal Communications Commission.[1] It is also, however, a matter in which members of the community have a vital concern and in which they can and should play a prominent role.

2. Licensees of radio and television stations are required to make a diligent, positive, and continuing effort to discover and fulfill the problems, needs, and interests of the communities they serve. The Commission encourages a continuing dialog between stations and community members as a means of ascertaining the community's problems, needs, and interests and of devising ways to meet and fulfill them. Members of the community can help a station to provide better broadcast service and more responsive programing by making their needs, interests, and problems known to the station and by commenting, whether favorably or unfavorably, on the programing and practices of the station. Complaints concerning a station's operation should be communicated promptly to the station, and every effort should be made, by both the complainant and the licensee, to resolve any differences through discussion at the local level.

3. The Commission is responsible for seeing that stations do in fact meet their obligations to the community. It considers complaints by members of the community against a station and before issuing or renewing a broadcast station license, must find that its action will serve the public interest, convenience, and necessity. However, to effectively invoke the Commission's processes, the citizen must not only concern himself with the quality of broadcasting but must know when, how, and to whom, to express his concern. On the one hand, the Commission is in large measure dependent on community members to bring up matters which warrant its attention. On the other, if resolute efforts are not first made to clear up problems at the local level, the Commission's processes become clogged by the sheer bulk of the matters brought before it.

4. If direct contact with a station does not produce satisfactory results, there are a number of formal and informal ways for members of the community to convey their grievances to the Commission and to participate in proceedings in which the performance of a station is judged and legitimate grievances are redressed. The purpose of this manual is to outline procedures available to the concerned citizen and to provide information and practical advice concerning their use. It is not a substitute for the rules of practice and procedure (47 CFR Part 1).[2] We are hopeful, however, that it will help community members to participate effectively and in a manner which is helpful to the Commission.

PROCEEDINGS INVOLVING PARTICULAR APPLICANTS AND LICENSEES

INITIATING A PROCEEDING

5. *Complaints generally.* A complaint against a broadcast station[3] can be filed with the Commission by any person at any time. You can go about it any way you wish; there are no particular procedural requirements, except as noted below. You should, however, bear the following facts in mind:

(a) During fiscal year 1971, the Commission received 53,503 complaints, comments, and inquiries concerning broadcast stations. Of this total, 23,424 were complaints.

(b) Almost all of these communications are initially considered and dealt with by approximately five Commission employees who are specially assigned this function. Additional personnel are assigned to a matter only if, on the initial examination, the complaint appears to warrant extensive inquiry, investigation or formal proceedings.

In light of this situation, there are a number of practical steps you can take which will be helpful to the Commission and will increase your effectiveness in making a complaint. These are set out below:

(1) Limit your complaint to matters on which the Commission can act. With minor exceptions (the provision of

---

[1] The Federal Communications Commission is an independent Government agency responsible for regulating interstate and foreign communication by radio and wire. One of its responsibilities is to determine who is to operate the limited number of broadcast stations, to regulate the manner in which they are operated, and to generally supervise their operation, to the end that such operation may serve the interests of the public. This booklet deals only with this one aspect of the Commission's responsibilities.

The FCC is composed of seven members, who are appointed by the President subject to confirmation by the Senate. Normally, one Commissioner is appointed or reappointed each year, for a term of 7 years. One of the Commissioners is designated by the President to serve as Chairman, or chief executive officer, of the Commission.

The Commissioners, functioning as a unit, supervise all activities of the Commission. They are assisted by a staff of approximately 1,500 persons. Note that the term "Commission" refers both to the seven Commissioners as a unit and to the entire agency, including the staff. For a general description of the Commission and its organization, see 47 CFR 0.1–0.5. For a full description of the Commission's functions and of authority delegated by the Commission to its staff, see 47 CFR Part 0. (The Commission's rules are printed in Volume 47 of the Code of Federal Regulations (CFR). See paras. 60 and 61 below.)

[2] The manual reflects procedures and policies in effect on September 20, 1972. Persons using this manual are cautioned that these procedures and policies are subject to change and that any changes made after September 20, 1972, are not reflected in this manual. In particular, it is noted that broad studies of the fairness doctrine (Docket 19260) and the renewal procedures (Dockets 19153 and 19154) were in progress when this manual was issued.

[3] Complaints relating to some of the operations of networks and other organizations associated with broadcasting can also be filed.

"equal time" for candidates for public office, for example), we cannot direct that a particular program be put on or taken off the air. Nor are we arbiters of taste. Our concern, moreover, is with matters which affect the community generally (the public interest) rather than with the personal preferences or grievances of individuals. Another publication, "The FCC and Broadcasting," contains more detailed information (in areas in which numerous complaints are received) regarding what the Commission can and cannot do. Copies will be furnished by the Complaints and Compliance Division of the Commission's Broadcast Bureau upon request.

(2) Submit your complaint first to the station involved. The station may well recognize the merit of your complaint and take corrective action, or may explain the matter to your satisfaction. If you are not satisfied with the station's response, it will aid and expedite action on your complaint to the Commission to enclose a copy of your complaint to the station and all subsequent correspondence between you and the station. (Though this way of proceeding is generally far preferable to complaining initially to the Commission, this is not always the case. If, for example, the complainant has reason for not disclosing his identity to the station, he may complain directly to the Commission, requesting that his identity not be disclosed.)

(3) Submit your complaint promptly after the event to which it relates.

(4) Include at least the following information in your letter of complaint:

a. The full name and address of the complainant.

b. The call letters and location of the station.

c. The name of any program to which the complaint relates and the date and time of its broadcast.

d. A statement of what the station has done or failed to do which causes you to file a complaint. Be as specific as possible: Furnish names dates, places and other details.

e. A statement setting forth what you want the station and/or the Commission to do.

f. A copy of any previous correspondence between you and the station concerning the subject of the complaint.

(5) Try to appreciate that the person reviewing your complaint must make rapid judgments regarding the gravity of the matters related and the action to be taken. There are a number of simple things you can do to make his job easier and to aid your own cause: State the facts fully and at the beginning. Subject to fully stating the facts, be as brief as possible. If the facts are self-explanatory, avoid argument; let the facts speak for themselves. Avoid repetition or exaggeration. If you think a specific law or regulation has been violated, tell us what it is. If possible, use a typewriter, but if you do write by hand, take special pains to write legibly.

6. A complaint received by the Commission is dealt with as follows:

(1) If the complaint does not allege a substantial violation of statute or of Commission rule or policy, if inadequate information is submitted, or if the factual statement is not sufficiently specific, a letter (which is often a form letter) explaining these matters is directed to the complainant.

(2) If the complaint does allege specific facts sufficient to indicate a substantial violation, it is investigated, either by correspondence with the station (which may produce a satisfactory explanation or remedial action) or, in rare instances, by field inquiry. (Since the Commission's investigatory staff is small, the number of complaints which can be investigated by field inquiry is limited.) If further information from the complainant is needed, he is asked to furnish it. If the staff concludes that there has been a violation, it may recommend to the Commission that sanctions be imposed on the station; it may direct remedial action (such as equal opportunities for a candidate for public office); or, where extenuating circumstances are present (as where the violation follows from an honest mistake or misjudgment or where the station otherwise has a good record), it may note the violation but not recommend a sanction. Possible Commission actions range from the imposition of monetary forfeitures not exceeding $10,000 and short-term renewal of license to revocation of license or denial of an application for renewal of license. The imposition of sanctions involves formal proceedings (which may include a hearing) and, in connection with such proceedings, the complainant may be asked to submit a sworn statement or to appear and give testimony at a hearing before an administrative law judge. In some circumstances, the complainant is entitled, and may choose, to participate as a party to the proceeding. A hearing is ordered in a renewal or revocation proceeding only if substantial questions have been raised concerning the licensee's qualifications.

7. Four types of complaint require compliance with specific procedures and submission of specific information. These complaints involve compliance with the requirement of equal time for political candidates, the fairness doctrine, the personal attack rule, and the rule governing political editorials. Generally, these matters should be taken up with the station before a complaint is filed with the Commission. However, where time is an important factor, you may find it advisable to complain simultaneously to the station and the Commission. In such circumstances, complaints are often submitted and answered by telegraph and, where the matter is most urgent, by telephone.

8. *Political broadcasting.* Section 315 of the Communications Act, 47 U.S.C. 315,[1] provides that if any Commission licensee shall permit any person "who is a legally qualified candidate for any public office" to use a broadcast station, he shall afford to all other candidates for that office equal opportunities to use the station's facilities. Appearances by candidates on the following types of programs are exempt from the equal opportunities requirement:

1. Bona fide newscast;
2. Bona fide news interview;
3. Bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary); or
4. On-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto).

However, where candidates appear on programs exempt from the equal opportunities requirement, broadcasters must nevertheless meet the obligation imposed upon them under the Communications Act (to operate in the public interest) and the fairness doctrine (to afford reasonable opportunity for the discussion of conflicting views on controversial issues of public importance). See paragraph 12 below. The equal opportunities and fairness doctrine requirements are applied to networks as well as to stations.

9. A request for equal opportunities must be made directly to the station or network and must be submitted within 1 week after the first broadcast giving rise to your right of equal opportunities. This is most important, as your right is lost by failure to make a timely request. To make it as clear as possible, we offer the following example:

A, B, and C are legally qualified candidates for the same public office. A makes an appearance on April 5 on a program not exempted by the statute. On April 12, B asks for an equal opportunity to appear on the station and does, in fact, appear on April 15. On April 16, C asks for an equal opportunity to appear. However, he is not entitled to do so, as he has failed to make his request within 1 week after A's appearance. If the station allows him to appear, it must subsequently grant any timely request for equal opportunities submitted by A and B.

There is an exception to this requirement where the person requesting equal opportunities was not a candidate at the time of the first broadcast giving rise to the right of equal opportunities. See 47 CFR 73.120(e).

10. If you are a candidate or his designated agent and think that the candidate has been denied equal opportunities, you may complain to the Commission. A copy of this complaint should be sent to the station. Your letter of complaint should state (1) the name of the station or network involved; (2) the name of the candidate for the same office and the date of his appearance on the station's facilities; (3) whether the candidate who appeared was a legally qualified candidate for the office at the time of his appearance (this is determined by reference to the law of the State in which the election is being held); (4) whether the candidate seeking equal time is a legally qualified candidate for the same office; and (5) whether you or your candidate made a request for equal opportunities to the licensee within 1 week of

[1] The Communications Act is printed in title 47 of the United States Code (U.S.C.). See paragraph 59 below.

the day on which the first broadcast giving rise to the right to equal opportunities occurred.

11. A political broadcasting primer ("Use of Broadcast Facilities by Candidates for Public Office"), containing a summary of rulings interpreting the equal opportunities requirement, has been published in the FEDERAL REGISTER and in the FCC Reports[5] (35 F.R. 13048, 24 F.C.C. 2d 832) and is available from the Commission upon request, as is a question and answer pamphlet ("Use of Broadcast and Cablecast Facilities by Candidates for Public Office") (37 F.R. 5796, 34 F.C.C. 2d 510). See also 47 U.S.C. 315 and 47 CFR 73.120.

12. *Fairness doctrine.* Under the fairness doctrine, if there is a presentation of a point of view on a controversial issue of public importance over a station (or network), it is the duty of the station (or network), in its overall programing, to afford a reasonable opportunity for the presentation of contrasting views as to that issue. This duty applies to all station programing and not merely to editorials stating the station's position. The station may make offers of time to spokesmen for contrasting views or may present its own programing on the issue. It must present suitable contrasting views without charge if it is unable to secure payment from, or a sponsor for, the spokesman for such views. The broadcaster has considerable discretion as to the format of programs, the different shades of opinion to be presented, the spokesman for each point of view, and the time allowed. He is not required to provide equal time or equal opportunities; this requirement applies only to broadcasts by candidates for public office. The doctrine is based on the right of the public to be informed and not on the proposition that any particular person or group is entitled to be heard.

13. If you believe that a broadcaster (station or network) is not meeting its obligation to the public under the fairness doctrine, you should complain first to the broadcaster. If you believe that a point of view is not being presented and wish to act as spokesman for that point of view, you should first notify the broadcaster. Barring unusual circumstances, complaints should not be made to the Commission without affording the broadcaster an opportunity to rectify the situation, comply with your request, or explain its position.

14. If you do file a fairness doctrine complaint with the Commission, a copy should be sent to the station. The complaint should contain specific information concerning the following matters: (1) The name of the station or network involved; (2) the controversial issue of public importance on which a view was presented; (3) the date and time of its broadcast; (4) the basis for your claim that the issue is controversial and of public importance (either nationally or in the station's local area at the time of the broadcast); (5) an accurate summary of the view or views broadcast; (6) the basis for your claim that the station or network has not broadcast contrasting views on the issue or issues in its overall programing; and (7) whether the station or network has afforded, or has expressed the intention to afford, a reasonable opportunity for the presentation of contrasting viewpoints on that issue.

15. A fairness primer ("Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance"), containing a summary of rulings interpreting the fairness doctrine, has been published in the FEDERAL REGISTER and the FCC reports (29 F.R. 10416, 40 F.C.C. 598), and is available from the Commission upon request.

16. *Personal attacks.* The personal attack rule requires that when, during the presentation of views on a controversial issue of public importance, an attack is made upon the honesty, character, integrity, or like personal qualities of an identified person or group, the broadcaster must, within 1 week after the attack, transmit to the person or group attacked (1) notification of the date, time and identification of the broadcast; (2) a script or tape (or an accurate summary if a script or tape is not available) of the attack; and (3) an offer of a reasonable opportunity to respond over the station's facilities free of charge. See 47 CFR 73.123(a). The personal attack rule does not apply to attacks made in the course of a bona fide newscast, a bona fide news interview, or on-the-spot coverage of a bona fide news event (including commentary or analysis by newsmen offered as part of such programs). Though the specific requirements of notice and an offer of an opportunity to respond do not apply to such programs, the other requirements of the fairness doctrine do apply. For other circumstances in which the personal attack rule does not apply, see 47 CFR 73.123(b). See also, the fairness primer, described above in paragraph 15.

17. If you believe that you or your group has been personally attacked during presentation of a controversial issue, and if you are not offered an opportunity to respond, you should complain first to the station or network involved. If you are not satisfied with the response, you may then complain to the Commission.

18. If you file a complaint with the Commission, a copy should be sent to the station. The complaint should contain specific information concerning the following matters: (1) The name of the station or network involved; (2) the words or statements broadcast; (3) the date and time the broadcast was made; (4) the basis for your view that the words broadcast constitute an attack upon the honesty, character, integrity, or like personal qualities of you or your group; (5) the basis for your view that the personal attack was broadcast during the presentation of views on a controversial issue of public importance; (6) the basis for your view that the matter discussed was a controversial issue of public importance, either nationally or in the station's local area, at the time of the broadcast; and (7) whether the station within 1 week of the alleged attack: (i) Notified you or your group of the broadcast; (ii) transmitted a script, tape, or accurate summary of the broadcast if a script or tape was not available; and (iii) offered a reasonable opportunity to respond over the station's facilities.

19. *Political editorials.* When a broadcast station, in an editorial, endorses a legally qualified candidate for public office, it is required to transmit to other qualified candidates for the same office (1) notice as to the date and time of the editorial, (2) a script or tape of the editorial, and (3) an offer of a reasonable opportunity for the other candidates or their spokesmen to respond to the editorial over the licensee's facilities free of charge. Where a broadcast station, in an editorial, opposes a legally qualified candidate for public office, it is required to send the notice and offer to the candidate opposed. The notice and offer must be sent within 24 hours after the editorial is broadcast. If the editorial is to be broadcast within 72 hours of election day, the station must transmit the notice and offer "sufficiently far in advance of the broadcast to enable the candidate or candidates to have a reasonable opportunity to prepare a response and to present it in timely fashion." See 47 CFR 73.123(c). See also, the fairness primer described above in paragraph 15.

20. If you are a candidate or his authorized spokesman and believe that the station, in an editorial, has opposed the candidate or supported his opponent and has not complied fully with these requirements, you should complain to the station or network involved. If, in response to your complaint, the station does not offer what you consider to be a reasonable opportunity to respond to the editorial, you may complain to the Commission. Send a copy of your complaint to the station.

PARTICIPATION IN APPLICATION PROCEEDINGS

21. *General.* Public expression regarding the operation of broadcast stations is not limited to letters of complaint. You can also support or object to applications filed with the Commission, such as an application for a new license, a change in existing facilities (for example, an increase in tower height or transmitter power or a change in studio location), or the renewal or transfer of a current license. You may proceed either formally, by filing a "petition to deny," or informally, by filing an "informal objection." (See below.) You may raise any public interest question relating to the application or the applicant. Allegations have been made in the past, for example, that the station's programing does not serve the needs and interests of the community or that the station has engaged in discriminatory employment practices. The question raised need not relate directly to the authority sought by the applicant. Your purpose in participating could properly be to effect a

[5] See paragraph 62 below.

change in the station's policies or practices, by negotiation or by Commission direction, rather than to have the application denied. It is desirable and important that you discuss your grievances with the station, as they occur, and try to work out a mutually acceptable solution, either prior to or in lieu of filing an objection to the grant of an application. The Commission does not look with favor on objections to a grant where grievances have been "stored up" during the license term, without being brought to the station's attention, and are disclosed for the first time in objections to an application.

22. With certain minor exceptions, all broadcast applicants are required to give notice to the community that they have filed an application with the Commission. See 47 CFR 1.580. Notice is published in local newspapers and (in the case of most existing licensee-applicants) is broadcast over their facilities. Public notice of the filing of the application is also given by the Commission. Applicants and licensees are required to maintain locally for public inspection copies of applications and other documents as specified in the Commission's rules. See 47 CFR 1.526. The notice given locally by the station will state the address at which these documents can be inspected. Additional papers relating to the station, including those kept locally, are available for inspection at the Commission's office in the District of Columbia.[6] Except in the case of certain minor applications (see 47 U.S.C. 309), the Commission must give notice of the acceptance of the application for filing at least 30 days before acting on it. See paragraphs 33 and 34 below.

23. *Informal objection.* If you have information which you believe should be considered by the Commission in determining whether the grant of an application would serve the public interest, convenience and necessity, you may file an "informal objection". See 47 CFR 1.587. Such objections may be filed in writing with the Secretary of the Commission, Washington, D.C. 20554, at any time prior to action on the application, and must be signed by the person making them. There are no other requirements.

24. The informal objection procedure is designed for use by persons who cannot qualify as "parties in interest" (see paragraph 30 below) or who (though they qualify as parties in interest) do not choose to assert the rights or to assume the burdens of parties to the proceeding. In addition, pleadings, or communications, submitted by persons who desire to participate as parties to the proceeding but which fail to meet the requirements for "petitions to deny" (see paragraph 29 below) are treated as informal objections.

25. Informal objections are dealt with much in the same manner as complaints and should include at least the minimum information required for an effective complaint (see paragraph 5, above). They are associated with the application to which they relate, however, and are reviewed by elements of the staff responsible for taking or recommending action on that application.

26. If in the judgment of the Commission's staff the objection does not raise a substantial public interest question, it will not be referred to the Commission (that is, the Commissioners) for consideration. In such cases, the staff will give notice of Commission or staff action on the application to persons who have filed an objection, advising them that their objection has been rejected by the staff as a basis for denying the application. An application for review of staff action by the Commission may be filed. Such an application must be filed prior to seeking judicial review. See 47 U.S.C. 155(d)(7); 47 CFR 1.115.

27. If in the judgment of the staff the objection raises a substantial public interest question, it is made the subject of field inquiry or is forwarded to the applicant for comment. If the applicant is asked to comment, he is required to serve a copy of his comments on the person who filed the objection, and that person is entitled to file a reply. If there is still a substantial question, it is referred to the Commission and is dealt with on its merits in conjunction with action on the application. If the Commission concludes that a substantial and material question of fact has been presented or if it is for any reason unable to find that a grant of the application would serve the public interest, it will order a hearing. Otherwise, it will grant the application. If a hearing is ordered, a person who has filed an informal objection will not ordinarily be named as a party to the proceeding, but may seek to participate as a witness or, within 30 days after publication of the hearing issues in the FEDERAL REGISTER, petition for intervention as a party. See paragraph 39 below.

28. If the objection is considered and disposed of in a Commission opinion granting the application, you may within 30 days petition for reconsiderations or seek judicial review. If you appeal or petition for reconsideration, you should be prepared to show that you are aggrieved or adversely affected by the Commission action (47 U.S.C. 402(b)(6) and 405). If you have not participated in proceedings resulting in a grant of the application (as by filing an informal objection), or if the Commission has not been afforded an opportunity to pass on the questions you intend to raise in court, you must file a petition for reconsideration before seeking judicial review.

29. *Petition to deny.* A petition to deny, which is a formal objection to grant of an application, is subject to the following statutory requirements (47 U.S.C. 309(d)):

(1) The petition must contain specific allegations of fact sufficient to show that the petitioner is a party in interest and which, if true, would demonstrate that a grant of the application would be inconsistent with the public interest, convenience and necessity.

(2) "Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof."

(3) The petitioner must serve a copy of the petition upon the applicant.

(4) The petition must be filed with the Commission within the time prescribed by the rules.

The requirements are discussed below at paragraphs 30–34. A petition opposing grant of an application which does not meet these requirements is treated as an informal objection. If you intend to appeal a grant of the application or wish to participate in any hearing held to determine whether the application should be granted or denied, or if you wish to assure Commission (rather than staff) action on your objections to the application, it is advisable to file a petition to deny rather than an informal objection. If you file a petition to deny, subsequent communication with Commissioners and certain other Commission personnel is limited by the rules governing ex parte communications, 47 CFR 1.1201–1.1251.[7]

30. There is no hard and fast rule for determining whether a member of the listening public or a community group qualifies as a party in interest. Generally, under court precedents, members of the listening public who show that they would be aggrieved or adversely affected by a Commission action granting an application of a station in their area have standing to raise public interest questions. It is important to bear in mind this last point—that arguments for denial of the application must be directed to the public interest rather than to your own personal interest. For example, you may show that you are hurt by the activities or failing of the station to which

[6] Most Commission records are routinely available for inspection under the Public Information Act (5 U.S.C. 552) and Commission rules implementing that Act (47 CFR 0.441–0.467). See, in particular, §§ 0.453 and 0.455. A person wishing to inspect such records has only to go to the office where they are kept and ask to see them. Requests for inspection of records not routinely available for inspection may be submitted, and are considered, under procedures set out in § 0.461 of the rules (47 CFR 0.461). Copies of records may be obtained for a fee from a private firm which contracts with the Commission to perform this service (see 47 CFR 0.465).

[7] It is important that you not communicate privately concerning the merits or outcome of any aspect of the case with persons who may participate in deciding it. Written communications must be served on parties to the proceeding. Oral communication must be preceded by notice to the parties affording them an opportunity to be present. Persons who may participate in the decision are (1) the Commissioners and their personal office staffs, (2) the Chief of the Office of Opinions and Review and his staff, (3) the Review Board and its staff, (4) the Chief Administrative Law Judge, the administrative law judges, and the staff of the Office of Administrative Law Judges, (5) the General Counsel and his staff, and (6) the Chief Engineer and his staff.

you object, as by showing that you live or work in the area served by the station and, if the charges relate to racial discrimination, that you are a member of a racial minority being discriminated against; but the substance of your arguments must be related to the interests of the community as a whole. Since the purpose of your participation is to argue for the interests of your community as a whole, it is relevant to show your ties to the community and knowledge of its problems and needs. To make a stronger showing,[8] it is also helpful to demonstrate that you are well qualified to represent the interests of the community and to aid the Commission in reaching a decision that best serves the interests of the community. You may, for example, have a background which specifically qualifies you on matters relating to your charges against the station. You may have a background in broadcasting or previous experience in Commission proceedings which would contribute to your effectiveness as a representative of the community. You may have access to information concerning the station's operations which is not generally available, as would be indicated by previous correspondence (or discussion) with the station concerning the charges set out in your petition. You may be the only member of the community who is prepared to assume the personal and financial burden which participation in Commission proceedings involves. It will help to show that others join with you in your petition or that you are serving as an authorized spokesman for a representative community group or groups. If other members of the public have separately petitioned to deny the application, you should endeavor to show that the contribution you can make would be superior to or different from that made by others. You should consider the possibility of joining with other members of the public for the purpose of participating in the hearing. If a large number of persons or groups seek to participate on behalf of the public, it is possible that some would be required to consolidate their efforts.

31. In determining whether the grant of an application is consistent or inconsistent with the public interest, the Commission is guided by the Communications Act, other laws pertinent to the facts of the case and the matters at issue, its own rules and regulations and policy statements, and past decisions of both the Commission and the courts. Although the facts set out in the petition to deny and the precise public interest question presented may be novel, it would be rare indeed if none of these guides could be brought to bear upon the question. It is possible, of course, to simply set out allegations of fact in a petition to deny and assert that they show that "a grant of the application would be prima facie inconsistent with the public interest" (47 U.S.C. 309(d)). Obviously, however, it is far more effective for you, and helpful to the Commission, if the facts alleged are related specifically to the policy and precedent guidelines utilized by the Commission in making its determination. An experienced attorney will be familiar with these materials and will know how to use them in effectively presenting your position.

32. Note that the statute requires specific allegations of fact. Hearsay, rumor, opinion, or broad generalizations, do not meet this requirement. Note also that the allegations must "be supported by affidavit of a person or persons with personal knowledge" of the facts. The petitioner need not, himself, have personal knowledge of the facts if he submits affidavits signed by others who do. An affidavit is a written statement, the truth of which is sworn to or affirmed before an officer who has authority to administer an oath, such as a notary public. Service of the petition is accomplished by delivering or mailing a copy to the applicant, on or before the day on which the document is filed. See 47 CFR 1.47. If the applicant is represented by an attorney, it is the attorney who should be served. A certificate of service, signed by the person who delivered or mailed the petition and reciting the fact and method of service, must be attached to the petition.

33. With minor exceptions (see 47 U.S.C. 309 (c) and (f)), no broadcast application may be granted earlier than 30 days following the Commission's issuance of a public notice stating that the application, or any substantial amendment thereof, has been "accepted for filing" (47 U.S.C. 309(b)). Except in the case of standard broadcast (AM radio) applications and renewal applications, the petition to deny must be filed within this 30-day period. In the case of standard broadcast (other than renewal) applications, the Commission issues a second public notice stating that the application is "available and ready for processing" and specifying a "cut-off" date, on which processing of the application will commence. Petitions to deny must be filed before the cutoff date. See 47 CFR 1.580(i).

34. Applications for renewal of licenses of broadcast stations (except experimental and developmental stations) must be filed 90 days prior to the expiration date of the license (47 CFR 1.539).[9] A petition to deny a renewal application must be filed by the end of the first day of the last full calendar month of the expiring license term (47 CFR 1.580(i) and 1.516(e)). Thus, for example, the license of a television station located in Illinois would ordinarily expire on December 1, 1973; the renewal application would be filed on or before September 1, 1973, and a petition to deny would have to be filed on or before November 1, 1973. There are two exceptions to the foregoing. First, the Commission may previously have issued a short-term license to the station in question; the license would in that case expire on a date specified by the Commission in its order making the short-term grant rather than on the date specified in footnote 9. Second, if the renewal application is filed late, the deadline for filing a petition to deny is the 60th day after the Commission has given public notice that the late filed application has been accepted for filing.

35. The applicant may file an opposition to your petition to deny within 10 days after the petition is filed. You may file a reply to the opposition within 5 days after the opposition is due. Note that the papers must reach the Commission within these periods. Reasonable requests for extensions of time will be granted if both parties consent or upon a showing of good cause. Note that requirements applicable to the petition to deny (service, supporting affidavits, etc.) also apply to the opposition and the reply. The purpose of a reply pleading is to respond to points made in the opposition pleading; it is not intended to give a petitioner an opportunity to present

[8] We do not wish to imply that a showing with respect to all of these matters, or as to any particular matter, is necessarily required to sustain your claim, or that other information may not also be appropriate. To the extent that the suggested information is set forth, however, it will enhance your showing. Do not, however, be discouraged by the number of factors listed. Our intent is to give you a general idea as to the type of information which can be submitted in support of a claim—not to indicate that the required showing is necessarily difficult to make.

[9] Licenses for standard broadcast (AM), FM and television broadcast stations ordinarily expire at 3-year intervals from the following dates:

(1) For stations located in Iowa and Missouri, February 1, 1971.

(2) For stations located in Minnesota, North Dakota, South Dakota, Montana, and Colorado, April 1, 1971.

(3) For stations located in Kansas, Oklahoma, and Nebraska, June 1, 1971.

(4) For stations located in Texas, August 1, 1971.

(5) For stations located in Wyoming, Nevada, Arizona, Utah, New Mexico, and Idaho, October 1, 1971.

(6) For stations located in California, December 1, 1971.

(7) For stations located in Washington, Oregon, Alaska, Guam, and Hawaii, February 1, 1972.

(8) For stations located in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, April 1, 1972.

(9) For stations located in New Jersey and New York, June 1, 1972.

(10) For stations located in Delaware and Pennsylvania, August 1, 1972.

(11) For stations located in Maryland, District of Columbia, Virginia, and West Virginia, October 1, 1972.

(12) For stations located in North Carolina and South Carolina, December 1, 1969.

(13) For stations located in Florida, Puerto Rico, and Virgin Islands, February 1, 1970.

(14) For stations located in Alabama and Georgia, April 1, 1970.

(15) For stations located in Arkansas, Louisiana, and Mississippi, June 1, 1970.

(16) For stations located in Tennessee, Kentucky, and Indiana, August 1, 1970.

(17) For stations located in Ohio and Michigan, October 1, 1970.

(18) For stations located in Illinois and Wisconsin, December 1, 1970.

For the expiration date of licenses of other classes of broadcast stations (for example, television booster and translator stations), see 47 CFR 74.15.

new matters. Also, pursuant to § 1.45(c) of the Commission rules (47 CFR 1.45(c)), additional pleadings may not be filed unless specifically requested and authorized by the Commission.

36. Questions raised in a petition to deny are dealt with on their merits in conjunction with action on the application in an opinion issued by the Commission (that is, by the Commissioners and not by the staff under delegated authority). The Commission will either deny your petition and grant the application, deny your petition and set the application for hearing on issues other than those you have raised, or grant your petition and set the application for hearing on some or all of the issues you have raised. If the application is granted, you may petition for reconsideration (see 47 U.S.C. 405; 47 CFR 1.106) or appeal to the U.S. Court of Appeals for the District of Columbia Circuit (see 47 U.S.C. 402(b)(6)). If a hearing is ordered and you are not named as a party, you may petition for reconsideration or (if you have previously made clear your wish to participate as a party) you may appeal; you may also file a petition to intervene (see 47 U.S.C. 309(e); 47 CFR 1.223) or seek participation as a witness. See paragraph 39 below.

37. If you file a petition to deny but do not intend to participate as a party to a hearing on the application, you should so advise the Commission in your petition. Otherwise, it will be assumed that you are asserting the right to participate and offering to prove the allegations set out in your petition; and, if a hearing is ordered and you have established your right to participate, you will be named as a party and may be assigned the burden of proceeding with the introduction of evidence and the burden of proof on the issues raised in your petition. You will be expected to appear at the hearing, present evidence, and proceed in other respects as a party. You are not required to retain an attorney. However, it is most advisable that you do so, as it is unlikely that you will be able to participate effectively without the assistance of counsel. If you do intend to retain counsel, it is advisable to do so at an early date, so as to have his assistance in preparing the petition to deny.

PARTICIPATION IN A HEARING PROCEEDING

38. The rules governing hearing proceedings are set out in Subpart B of Part 1 of Title 47 of the Code of Federal Regulations. If you do not retain an attorney, it is important that you familiarize yourself thoroughly with those rules. It is also important that you become familiar with Subpart A, the general rules of practice and procedure, many of which apply in hearing proceedings. Though the following outline of the procedural stages of a hearing proceeding may be helpful, effective participation will require a more detailed knowledge of the rules.

39. When the Commission determines that a hearing should be held, it issues an order (called a designation order) specifying the issues upon which evidence will be received and naming known parties in interest as parties to the proceeding. Shortly thereafter, the Chief Administrative Law Judge issues an order naming a presiding officer, setting a time and place for an initial prehearing conference, and specifying the place of the hearing and the date for its commencement. If you are named as a party, and wish to participate, you should, within 20 days after the designation order is mailed, file a notice of appearance stating that you will appear at the hearing. See 47 CFR 1.221. This notice and (except as otherwise expressly provided) all papers subsequently filed must be served on all other parties to the proceeding. See 47 CFR 1.47 and 1.211; see also, the rules governing ex parte presentations, 47 CFR 1.1201–1.1251. The notice of appearance should list the address at which you wish other parties to serve papers on you. If you are not named as a party, you may petition to intervene. See 47 CFR 1.223. To intervene as of right, you must show that you are a party in interest (see paragraph 30 above) and must file the petition within 30 days after the designation order is published in the FEDERAL REGISTER. It is not necessary for you to have participated in earlier stages of the proceeding. If the petition is filed late or if it fails to show that petitioner is a party in interest, his intervention as a party lies within the discretion of the presiding officer. You may appeal to the Review Board, as a matter of right, from an order denying your petition to intervene. See 47 CFR 1.301(a)(1). (For a description of the Review Board and its functions, see 47 CFR 0.361 and 0.365.) If the petition is denied, the person objecting may nevertheless request Commission counsel to call him as a witness. He may request other parties to the proceeding to call him as a witness. And if these measures fail, he may appear at the hearing and ask that the presiding officer allow him to testify. If he shows that his testimony will be relevant, material, and competent, he will be allowed to testify. See 47 CFR 1.225(b). A person who has been permitted to participate as a party may move before the Chief Administrative Law Judge to hold the hearing in the community where the station is located, rather than in the District of Columbia. Action on that request lies within the discretion of the Chief Administrative Law Judge. Subject to budgetary limitations, hearings are held in the local community when it appears that there will be a sizable number of witnesses who live in that community.

40. If you are permitted to participate as a party, a number of new rights accrue to you. If you are dissatisfied with the issues listed by the Commission, you may petition for the addition or deletion of an issue or for the modification of those which are listed. See 47 CFR 1.229. Such petitions are acted on by the Review Board. You may utilize procedures for the discovery of facts relevant to the proceeding. See 47 CFR 1.311–1.325. You may file pleadings and oppose or support any motion or petition filed by any other party to the proceeding. You may ask the presiding officer to issue subpenas requiring the attendance of witnesses or the production of documents at the hearing. See 47 CFR 1.331–1.340. You may examine witnesses, object to the introduction of evidence, and cross-examine the witnesses of other parties. You are expected to be present at the hearing (either personally or by attorney) and to participate in the proceedings. If you subpena witnesses, you are responsible for payment of witness fees.

41. About 4 weeks after the proceeding is designated for hearing, the presiding officer holds an initial prehearing conference. See 47 CFR 1.248. Additional conferences may be held. At such conferences, the presiding officer works with counsel for the parties to devise a schedule for the completion of procedures (such as discovery and summary decision procedures) to be followed by counsel and to settle as many matters as possible before the evidentiary hearing. Counsel may, for example, enter into stipulations regarding undisputed facts and reach agreement as to the scope of the issues set for hearing. They may also agree as to the authenticity of exhibits and as to the qualifications of expert witnesses. Such agreement aids counsel in the preparation of his case, allowing him to concentrate on matters which remain in dispute. It also saves the time and expense which would otherwise be involved in establishing the facts agreed upon by testimony at the hearing. By the time you attend the conference, you should have a clear understanding of what you intend to prove, how (by what witnesses and exhibits) you intend to prove it, and of any collateral procedures you intend to follow, so that you can make full use of the prehearing technique.

42. A Commision hearing is much like a trial in a civil case in a court of law. Instead of a judge, there is a presiding officer, usually one of the Commission's administrative law judges. The administrative law judge is independent of the remainder of the agency and, with minor exceptions, his sole function is to preside over and initially decide Commission hearing proceedings. The Commission's Broadcast Bureau usually participates as a party to the proceeding, on behalf of the public, and is represented at the hearing by an attorney from its Hearing Division. At the hearing proper, witnesses testify under oath, are examined and cross-examined, and a transcript is made of their testimony; exhibits are offered in evidence; the rules of evidence are applied; and various motions are made, argued, and acted on. The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitute the exclusive record for decision.

43. When the testimony of all witnesses has been heard, the presiding officer closes the record (47 CFR 1.258)

and certifies the transcript and exhibits as to identity (47 CFR 1.260). Parties are afforded an opportunity to move for correction of the transcript (47 CFR 1.261) and to file proposed findings of fact and conclusions of law, which may be supported by a brief (47 CFR 1.263, 1.264). The presiding officer then prepares and issues an initial decision, which becomes effective 50 days after its issuance unless it is appealed by a party or reviewed by the Commission on its own motion (47 CFR 1.267 and 1.277(d)).

44. If you are dissatisfied with the initial decision you may, within 30 days, file exceptions to the decision, which may be accompanied by a brief. See 47 CFR 1.271–1.279. You may also, within this period, file a statement supporting the initial decision. Reply briefs may be filed within 10 days. In cases involving the revocation or renewal of a broadcast station license, the decision is reviewed by the Commission. In other broadcast cases, unless the Commission specifies otherwise, the decision is reviewed by the Review Board (47 CFR 0.365(a)). After exceptions have been filed, the parties may request an opportunity for oral argument before the Commission or the Review Board, as the case may be (47 CFR 1.277). Such requests are ordinarily granted. Thereafter the Commission (or the Board) issues a final decision (47 CFR 1.282). Within 30 days after release of a final Commission decision, you may petition for reconsideration (47 U.S.C. 405; 47 CFR 1.106) or file a notice of appeal with the U.S. Court of Appeals for the District of Columbia Circuit (47 U.S.C. 402(b)). In the case of a Review Board decision, you may, within 30 days, file either a petition for reconsideration by the Board or an application for review of the decision by the Commission. See 47 U.S.C. 155(d); 47 CFR 1.101, 1.102, 1.104, 1.106, 1.113, 1.115, and 1.117. You must seek Commission review of a Board decision before seeking judicial review.

RULE MAKING

45. A rule is similar to a law. It is a statement of policy to be applied generally in the future. A rule making proceeding is the process, required by law, through which the Commission seeks information and ideas from interested persons, concerning a particular rule or rule amendment, which will aid it in making a sound policy judgment. There are other ways, when a rule is not under consideration, in which the Commission seeks information needed to meet its regulatory responsibilities. It may issue a Notice of Inquiry, in which interested persons are asked to furnish information on a given matter and their views as to whether and how the Commission should deal with it. If needed information cannot be obtained in proceedings on a Notice of Inquiry, the Commission can order an investigatory hearing, in which witnesses and records can be subpenaed. If the information obtained indicates that rules should be adopted, the Commission then initiates a rule making proceeding.

PETITION FOR RULE MAKING

46. The principal rules relating to broadcast matters are set out in the rules and regulations of the Commission as Subpart D of Part 1, Part 73 and Part 74. Other provisions relating to broadcasting will be found in Parts 0 and 1. If you think that any of these rules should be changed or that new rules relating to broadcasting should be adopted by the Commission, you are entitled to file a petition for rule making. 5 U.S.C. 553(e); 47 CFR 1.401–1.407. No specific form is required for such a petition, but it should be captioned "Petition for Rule Making" to make it clear that you regard your proposal as more than a casual suggestion. An original and 14 copies of the petition and all other pleadings in rule making matters should be filed.

47. The petition "shall set forth the text or substance of the proposed rule * * * together with views, arguments and data deemed to support the action requested * * *." 47 CFR 1.401(c). This is important, for unless statements supporting or opposing your proposal are filed, you are afforded no further opportunity, prior to Commission action on the petition, to explain or justify your proposal.

48. When a petition for rule making is received, it is given a file number (such as RM–1000) and public notice of its filing is given. The public notice briefly describes the proposal and invites interested persons to file statements supporting or opposing it. Statements must be filed within 30 days after the notice is issued and must be served on the petitioner, who may reply to such a statement within 15 days after it is filed. The reply must be served on the person who filed the statement to which the reply is directed.

49. If a petition for rule making is repetitive or moot or for other reasons plainly does not warrant consideration by the Commission, it can be dismissed or denied by the Chief of the Broadcast Bureau. See 47 CFR 0.280(bb). In that event, petitioner may file an application for review of the Bureau Chief's action by the Commission. See 47 CFR 1.115. In most cases, however, the petition for rule making is acted on by the Commission. Action is ordinarily deferred pending passage of the time for filing statements and replies. Where the changes proposed obviously have (or lack) merit, however, action may be taken without waiting for the submission of statements or replies. In acting on a petition for rule making, the Commission will issue (1) an order amending the rules, as proposed or modified, or (2) a notice of rule making proposing amendment of the rules, as proposed or modified, or (3) an order denying the petition. In the event of adverse action by the Commission, you may petition for reconsideration (47 CFR 1.106).

RULE MAKING WITHOUT PRIOR NOTICE AND PUBLIC PROCEDURE

50. Rule making proceedings are conducted under section 4 of the Administrative Procedure Act, 5 U.S.C. 553. See also, 47 CFR 1.411–1.427. section 4 provides that an agency may make rules without prior notice and public procedure in any of the following circumstances:

(a) Where the subject matter involves a military or foreign affairs function of the United States.

(b) Where the subject matter relates to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(c) Where the rules made are interpretative rules, general statements of policy, or rules of agency organization, procedure or practice.

(d) Where the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure are impracticable, unnecessary, or contrary, to the public interest.

The rules of organization practice and procedure (47 CFR Parts 0 and 1) are rather frequently amended, often without prior notice and public procedure. However, prior public comment is requested if the matters involved are particularly significant or there is doubt or controversy concerning the wisdom, precise effect, or details of the rule. Where notice is omitted pursuant to (d) above, it is in circumstances where the effect of the rule could be undermined by actions taken during the period allowed for comment, where the rule merely repeats the provisions of a statute, where the provisions of the rule are beneficial to all and there is no reason to expect unfavorable public comment, or in other similar circumstances constituting good cause under the statute. The other exceptions to the requirement of prior notice are of lesser importance.

51. If you are dissatisfied with a rule made by the Commission without prior notice, you may file a petition for reconsideration. You may also request that the effect of the rule be stayed pending action on your petition. All orders changing the Commission's rules are published in the FEDERAL REGISTER, and the 30-day period for filing the petition for reconsideration runs from the date of publication.

RULE MAKING WITH PRIOR NOTICE AND PUBLIC PROCEDURE

52. Except in circumstances listed in paragraph 50 above, the Commission is required to give prior notice and to afford an opportunity for public comment before making or changing a rule. If you have something to say concerning the proposed rule, you are entitled to file comments. Notice is given by issuance of a notice of proposed rule making, and by publishing that notice in the FEDERAL REGISTER. The text of the proposed rule is usually set out in the notice. On occasion, however, the notice will instead indicate the subject involved and the result intended, leaving the precise method for obtaining that result to a later stage of the proceeding following consideration of public comment. Whether or not the text is set out, the notice contains an

explanation of the proposed rule and a statement both as to the Commission's reasons for proposing the rule and its authority to adopt it. The notice also lists the dates by which comments and reply comments should be submitted and states whether there are limitations on Commission consideration of nonrecord communications concerning the proceeding.[11] Requests for extension of the time allowed for filing comments and reply comments may be filed.

53. Rule making proceedings are relatively informal. When a notice of proposed rule making is issued, the proceeding is given a docket number (such as Docket No. 15000). Papers relating to the proceeding are placed in a docket file bearing this number. This file is available for inspection in the Commission's Public Reference Room in Washington, D.C. Because comments and reply comments are sometimes filed by hundreds of persons, the Commission does not require that copies be served on others. To find out what others have said in their comments, you may inspect the docket file or arrange with a private firm (for a fee) to furnish copies of comments filed in the proceeding. See 47 CFR 0.465. Often, those who have filed comments will furnish copies as a courtesy upon request. All papers placed in the docket file are considered by the Commission before taking final action in the proceeding. To assure that your views are placed in the docket file and considered by the Commission, all comments, pleadings, and correspondence relating to the proceeding should (in the caption or otherwise) show the docket number.

54. The rules require that an original and 14 copies of comments be filed, that they be typed, doubled-spaced, timely filed, and so forth. See, e.g., 47 CFR 1.419. As a practical matter, it is important for you to meet these requirements. The 14 copies are needed for distribution to Commissioners and members of the staff involved in making a decision. If you submit only an original, it will be placed in or associated with the docket file and considered by the staff member assigned to write a decision but probably will not be seen by other Commission officials. Handwritten communications are also placed in the docket file and so considered. You should appreciate, however, that you are more likely to get your point of view across to the persons making the decision if your presentation is typewritten. In making a rule, the Commission is interested in getting as much information and the best thinking possible from the public before making a decision and does not reject comments on narrow technical grounds. However, failure to comply with the filing requirements adversely affects your right to have the comments considered and to complain if they do not receive what you consider to be full consideration.

55. The comments should explain who you are and what your interest is. They should recite the facts and authority which support your position. They should not ignore facts and authorities which tend to support a different position, but should deal with them and demonstrate that the public interest requires that the matter be resolved as you propose. They should be carefully worded and well organized and free of exaggeration or vituperative comment. They should be explicit. If the details of the proposed rule or one of several provisions only are objectionable, this should be made clear. Counterproposals may be submitted. If the rule would be acceptable only with certain safeguards, these should be spelled out, with the reasons why they are needed.

56. In rule making proceedings, the Commission's responsibility is to make a policy judgment and, in making that judgment, to obtain and consider comments filed in the proceeding. It may tap other sources of information. Unless otherwise expressly stated in the notice,[11] staff members working on the proceeding are generally prepared to meet with and discuss the proposed rule with anyone who is sufficiently interested. They may initiate correspondence or organize meetings to further develop pertinent information and ideas. They will utilize information available in the Commission's files and draw upon the knowledge and experience of other Commission personnel or of other Government agencies. Generally, the Commission hears oral argument only in rule making proceedings involving policy decisions of the greatest importance. However, you may request the Commission to hear argument in any proceeding, and that request will be considered and ruled upon. When argument is heard, interested persons appear before the Commissioners, orally present their views, and are questioned by the Commissioners. Other devices, such as panel discussions, have, on occasion, been used to further develop the information and ideas presented. An evidentiary hearing is not usual in rule making proceedings. Nevertheless, if you think the circumstances require an evidentiary hearing, you are entitled to ask that one be held.

57. After comments and reply comments and the record of oral argument (if any) have been reviewed, a policy judgment is made and a document announcing and explaining it is issued. There are a number of possibilities. The proposed rules may be adopted, with or without changes. They may be adopted in part and, in that event, further comment may be requested on portions of the proceeding which remain. The Commission may decide that no rules should be adopted or that inadequate information has been obtained and, thus, either terminate the proceeding or issue a further notice of proposed rule making requesting additional comment on particular matters. If final action as to all or any part of the proceeding is taken, the final action taken is subject to reconsideration (47 U.S.C. 405).

PETITION FOR WAIVER OF A RULE

58. Except as they implement mandatory statutory provisions, all of the Commission's rules are subject to waiver. 47 CFR 1.3. If there is something the rules prohibit which you wish to do, or if there is something the rules require which you do not wish to do, you may petition for waiver of the rules in question. The petition must contain a showing sufficient to convince the Commission that waiver is justified on public interest grounds (that is, the public interest would be served by not applying the rule in a particular situation) or, in some instances, on grounds of hardship or undue burden.

REFERENCE MATERIALS

59. Laws relating to communications have been compiled in title 47 of the United States Code, which is available in most libraries. The basic law under which the Commission operates is the Communications Act of 1934, as amended, 47 U.S.C. 151–609. A pamphlet containing the Communications Act, the Administrative Procedure Act, and other statutory materials pertaining to communications may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, for $2.55. Ask for the "The Communications Act of 1934" and "Packets 1–5". The pamphlet, with the packets of revised pages, shows all changes in the Act through January 1969.

60. The Commission's rules and regulations have been compiled in Chapter I of title 47 of the Code of Federal Regulations, which is available in many libraries. Chapter I is divided into four subchapters, which are printed in separate volumes, which may be purchased separately from the Superintendent of Documents. Those wishing to participate in broadcast matters will need two of these volumes:

Subchapter A—General—$1.75.
Subchapter C—Broadcast Radio Services—$1.75.

These volumes are revised annually.

61. The Commission's rules may also be purchased from the Superintendent of Documents in looseleaf form on a subscription basis. The rules are divided into 10 volumes, each containing several related parts. Each volume may be purchased separately. The purchase price includes a subscription to replacement pages reflecting changes in the rules until such time as the volume is revised. Those wishing to participate in broadcast matters will need two of these volumes:

[11] In rule making proceedings which involve "conflicting private claims to a valuable privilege," fairness precludes nonrecord communication between Commission personnel involved in making a decision and interested persons concerning the merits of the proceeding. Sangamon Valley Television Corp. v. F.C.C., 269 F. 2d 221, 224. In such proceedings, limitations on communication with the Commission are stated in the notice of proposed rule making.

[11] See footnote 10 above.

Volume I—containing Parts 0, 1, 13, 17, and 19—$4.50.
Volume III—containing Parts 73, 74, 76, and 78—$10.50.

62. All documents adopted by the Commission which have precedential or historical significance are published in the FCC reports, which are available in some libraries. The reports are usually published weekly in pamphlet form. The pamphlets are available from the Superintendent of Documents on a subscription basis and are subsequently compiled and published in bound volumes. The annual subscription price for the weekly pamphlets is $14. The cost of the bound volumes varies.

63. A list of the Commission's printed publications (with prices) will be furnished by the Commission on request.

[FR Doc.72-16581 Filed 9-28-72;8:45 am]